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JONES et al. v. BUCKINGHAM SLATE CO., Inc.

March 12, 1914.

[81 S. E. 28.]

1. Appeal and Error (§ 80*)—Decree Appealable—Final Decree.—A decree is final, so as to be appealable, when it either refuses or grants the relief sought by the complaining party.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 429, 432, 433, 450, 456, 457, 494-509; Dec. Dig. § 80.* 1 Va.-W. Va. Enc. Dig. 437; 14 Va.-W. Va. Enc. Dig. 61; 15 Va.-W. Va. Enc. Dig. 53.]

2. Appeal and Error (§ 79*)—Judgments Appealable—Final Judgments Appealable—Final Judgment.—Where complainant filed a bill of interpleader to have determined, as between defendants, who were adverse claimants, the right to royalties from a slate quarry which complainant held and offered to bring into court a decree overruling a demurrer to the bill, and directing complainant to deposit the funds held to the court's credit, and awarding it costs out of the fund, was final as to complainant, so as to be appealable by one of the defendants.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 484-493; Dec. Dig. § 79.* 1 Va.-W. Va. Enc. Dig. 437; 14 Va.-W. Va. Enc. Dig. 61; 16 Va.-W. Va. Enc. Dig. 53.]

3. Appeal and Error (§ 79*)—Judgments Appealable—Final Judgment—Finality as to One Party.—A decree may be final and appealable as to one party, without being final as to all.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 484-493; Dec. Dig. § 79.* 1 Va.-W. Va. Enc. Dig. 437; 14 Va.-W. Va. Enc. Dig. 61; 15 Va.-W. Va. Enc. Dig. 53.]

4. Courts (§ 250*)—Jurisdiction—Title to Land.—The boundaries between two tracts, the owners of which claimed royalties under their respective conveyances to complainant of the right to quarry slate thereon, is merely incidental to the ownership of the royalties, so far as concerns the jurisdiction of the Supreme Court of Appeals, in a suit of interpleader by the common grantee to have determined the adverse claims of the grantors to certain royalties, so that the royalties involved must amount to at least \$300 to give that court jurisdiction.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 773, 774, 778, 779; Dec. Dig. § 250.* 1 Va.-W. Va. Enc. Dig. 491.]

5. Appeal and Error (§ 503*)—Judgments Appealable—Amount.—While, where a judgment has the effect of drawing in question the validity of a claim to an amount greater than the jurisdictional sum of the Supreme Court of Appeals, an appeal will lie, though the

*For other cases see same topic and section NUMBER in Dec. Dig. & Am; Dig. Key No. Series & Rep'r Indexes.

amount involved in the present action is less than \$500, and where the judgment appealed from involved the right to royalties from a slate quarry in a sum less than \$300, and it does not affirmatively appear from the appellate record that the quarry operation will continue, so that a sum greater than that amount will ever be involved, the Supreme Court of Appeals does not have jurisdiction of the appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2310, 2311; Dec. Dig. § 503.* 1 Va.-W. Va. Enc. Dig. 477; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

6. Appeal and Error (§ 503*)—Record—Jurisdiction of Appellate Court.—The jurisdiction of the appellate court must affirmatively appear from the record.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2310, 2311; Dec. Dig. § 503.* 1 Va.-W. Va. Enc. Dig. 476; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

Appeal from Circuit Court, Buckingham County.

Bill of interpleader by the Buckingham Slate Company, Incorporated, against Jennie S. Jones, A. L. Pitts, and others. Decree that defendants interplead was granted, and on the issues between them decree was entered in favor of Pitts, and Jennie S. Jones and others appeal. Appeal dismissed.

F. C. Moon, of Lynchburg, and *W. M. Justis*, for appellants.

Smith & Gordon, of Richmond, *E. W. Hubbard*, of Buckingham, *A. L. Pitts, Jr.*, of Scottsville, and *T. L. Minor*, for appellee.

CAMPBELL *v.* ALSOP'S ADM'R.

March 12, 1914.

[81 S. E. 31.]

1. Wills (§ 66*)—Contract to Devise or Bequeath—Performance.—

A widow, whose relatives other than a nephew had abandoned her, sold her dower interest in certain realty, and then contracted in writing with the nephew that, in consideration of his constructing a house, and caring for her, to give him all her other property at her death. The work of construction was begun, but was delayed, owing to the inability of the contractor to perform promptly, during which time the widow was cared for by others, at the nephew's expense, and without complaint by her, and, before the house could be erected, she suddenly died. Held, that the nephew's delay in performance did not invalidate the contract, nor deprive him of the right to the property transferred thereby.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 173, 174; Dec. Dig. § 66.* 3 Va.-W. Va. Enc. Dig. 419.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.